

## **METROPOLITAN AREA PLANNING COMMISSION**

### **MINUTES**

**December 23, 2004**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, December 23, 2004, at 1:30 P.M., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Morris K. Dunlap, Chair; Harold Warner Jr., Vice-Chair; James Barfield; Darrell Downing; John W. McKay Jr.; Bill Johnson (out @3:32); Bud Hentzen; Ronald Marnell; M.S. Mitchell; Denise Sherman; and Frank Garofalo. Bob Hernandez, Elizabeth Bishop and Gary K. Gibbs were not present. Staff members present were: John L. Schlegel, Secretary; Dale Miller, Current Plans Supervisor; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Jess McNeely, Associate Planner; David Barber, Land Use Supervisor; and Rose Simmering, Recording Secretary.

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#### **❖ PLANNING COMMISSION ITEMS**

1. Approval of December 9, 2004 meeting minutes.

This item was deferred.

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2. **Case No.: DR2004-09 Request Midtown Neighborhood-wide Rezoning Proposal. Presentation of the proposed rezoning, and request to put the rezoning on the public agenda. Advanced Plans Committee heard on December 9<sup>th</sup> 2004 and November 18<sup>th</sup> 2004.**

Generally located North Boundary – 18<sup>th</sup> Street North, South Boundary – Murdock, East Boundary – Santa Fe, West Boundary – Little Arkansas River.

**Background:** In May 2004, following over a year of development and neighborhood input, the Wichita City Council adopted the *Midtown Neighborhood Plan* to serve as a blueprint for the conservation and revitalization of this historic neighborhood. The current zoning pattern for the Midtown neighborhood dates back over 50 years, and reflects a different vision for most of the neighborhood than has been identified in the recently adopted *Midtown Neighborhood Plan*. One of the priority action items identified in the Plan is the creation of a zoning approach that better reflects existing land use and future redevelopment opportunities.

#### **Problems with Existing Zoning**

The Mission of the *Midtown Neighborhood Plan* is “To enhance the appearance, safety, and quality of life in Midtown to make it an attractive and desirable place to live, work, and play for the benefit of all residents, businesses, visitors, and property owners.” A specific goal of the plan is to “Maintain and improve the character of the neighborhood”; unfortunately, much of the neighborhood is “over-zoned” for its character. Single-family homes in “B” Multi-family zoning, offices and homes in “LI” Limited Industrial zoning are typical examples. This zoning, which is inconsistent with current uses and structures, creates the risk of incompatible land uses in the neighborhood, it creates a risk to the character of individual homes and buildings, and it creates a risk to the character of the neighborhood as a whole. Uses deemed inappropriate by the Midtown Neighborhood Association are permitted under much of the existing zoning. Property owners can be reluctant to re-invest in their properties due to inappropriate uses that are allowed under the current zoning. A goal of the rezoning is to “match the current use with the appropriate zoning.”

The Midtown Neighborhood Rezoning Committee, consisting of neighborhood and city representatives, was formed to help recommend a new zoning scheme for the neighborhood. This rezoning scheme will address all properties located within the following area: **south of 18<sup>th</sup> Street, west of Santa Fe, north of Murdock, and east of the Little Arkansas River.**

A new zoning approach will be recommended to the Wichita City Council based upon the following principles:

1. No property will be rezoned against the wishes of the property owner. No changes will be proposed that will prevent residents, businesses or landlords from continuing their existing operations or uses.
2. No property will be rezoned to a higher intensity zoning classification. This is necessary in order to streamline the neighborhood rezoning initiative, while at the same time independently preserving full notification requirements normally associated with any property rezoning proposal for higher intensity uses.
3. Neighborhood-wide rezoning will be proposed that accommodates the wishes of property owners while facilitating future anticipated /desired land uses as envisioned in the *Midtown Neighborhood Plan Land Use Concept Map*. There will be no rezoning fees charged to property owners affected by this rezoning initiative.
4. Neighborhood-wide rezoning will be proposed that reflects the support and endorsement of the Historic Midtown Citizens' Association and the Midtown Neighborhood Plan Steering Committee.

**Analysis:** Work began on the Midtown neighborhood-wide rezoning initiative in June of this year. An inventory and analysis of existing land uses and zoning was completed in July 2004. The Rezoning Committee subsequently completed a preliminary rezoning scheme that was presented at two neighborhood public meetings held on September 7<sup>th</sup> and October 26<sup>th</sup> at the Midtown Community Resource Center. Two letters were sent to all property owners in the Plan area, advising them of the rezoning initiative and inviting them to attend the neighborhood meetings. The Wichita Eagle published press releases for each of the public meetings, along with contact information. The District 6 Advisory Board heard the proposed rezoning on November 1<sup>st</sup>. Each of

these public meetings had question and answer sessions, and one-on-one discussions with the rezoning committee and staff. The Advance Plans Committee of MAPC heard the proposed rezoning on November 4<sup>th</sup>, November 18<sup>th</sup>, and December 9<sup>th</sup>. Each meeting gave feedback, resulting in further refinements of the proposed rezoning.

**Summary of Proposed Midtown Neighborhood Rezoning:** Much of the residential property currently zoned "B" Multi-family or "MF-29" Multi-family would be rezoned "TF-3" Two-family. However, certain pockets of "B" and "MF-29" are proposed to retain their current zoning, based on current use and future plans. The "TF-3" zoning accommodates existing and proposed parks, schools, and religious facilities. No property in the plan is proposed to rezone to "SF-5" Single-family. Much "LI" Limited-Industrial and "GC" General Commercial zoned property is proposed for "OW" Office Warehouse and "GO" General Office. "GC" General Commercial zoning on Broadway north of 13<sup>th</sup> is proposed as "LC" Limited Commercial. Several small pockets of "LC" Limited Commercial are proposed to become "NR" Neighborhood Retail. "LI" Limited Industrial property along Santa Fe and the UP/BNSF Rail Corridor is proposed for "B" Multi-family zoning, as the neighborhood plan recommends a future linear park. Thus far, 26 property owners have requested to opt out of the proposed rezoning scheme. At least five property owners have worked with the committee to request a zoning "between" current zoning and what was originally proposed.

Written notification accompanied by detailed map sets showing the proposed final zoning changes (if any) for each parcel, will be sent to all affected property owners following the Metropolitan Area Planning Commission setting a public hearing date for this rezoning. Every property owner in the target area will be given ample opportunity up to and including the public hearing to request that the existing zoning for their property remain as is.

**Recommendations/ Actions:** That the Metropolitan Area Planning Commission indicate its support for the final rezoning scheme proposed by the Midtown Neighborhood Rezoning Committee, dated December 14, 2004, and schedule a public hearing on **January 27, 2005 at 1:30 p.m.** pursuant to State Statute to receive formal public comment and consider adoption of the rezoning scheme as an amendment to the Wichita-Sedgwick County Unified Zoning Code.

**Attachments:**

1. Existing Zoning for the Midtown Neighborhood.
2. Proposed Final Rezoning for the Midtown Neighborhood dated December 14, 2004.

JESS MCNEELY Planning staff presented report.

JANET MILLER, Midtown Rezoning Committee Member. The reason we chose this initiative is because one of the largest complaints that we heard from citizens that live in the Midtown Area as we were developing the plan was that this or that is being built next to my house, or this house was torn down and now something else is going in that is not a residential property or there is overcrowding in some areas where there is very dense number of apartments in one house.

We decided that as a part of the plan that the zoning would be one of the first issues that we would tackle. The purpose of the rezoning is our goal is to get the zoning to more closely match how the property is being used today in Midtown. Our goal is not to change the way properties are being used by discontinuing uses but rather to get the zoning to match the present use. We have a lot of higher class zoning than we actually need based on how the property is being used today.

The benefits that we have been telling folks in the neighborhood are zoning encourages compatible uses, it will help us preserve the residential and neighborhood retail flavor of the neighborhood. We will not be adding a great deal of general commercial or industrial except in those areas, which have been designated for it. As well as making it easier for people to get residential mortgages because in some areas now that it is difficult because there are homes located in commercial and industrial zoning.

No property is being rezoned against anybody's wishes. People may opt out if they wish to, we have tried to give them as many opportunities as possible to come hear about the plan and come do that if they want to. No current uses will be ceased, in other words nobody will have to discontinue their property as it is presently used, and nobody is being charged any fees to do this. The process that we have used, we have done the mailings, we have had two public meetings, we have presented at the District Advisory Boards twice and we will be going back there again. The Advance Plans Committee has been extremely helpful in this process and they have made some suggestions at each meeting and made some changes based on their assistance.

Yet to do after the public hearing what will happen, is that we will get another notice published, and we will try and get a newspaper article, and we will post it at the Midtown Community Resource Center on the marquee there. Every property owner will receive a mailing, letting them know specifically about the plan, they will also get a map which they will be able to look at and see how their property is proposed to be rezoned. They will also get a form with that mailing to give them the opportunity to opt out if they wish to, and they will be able to opt out up through the public hearing date.

So far of all the people that we have talked to only a few have opted out, and several have been interested in changing their zoning from something between what had originally been recommended, and in all cases the group working on this project has been supportive of those requests.

DUNLAP Those people who want to opt out what is their reason for doing that?

JANET MILLER As I understand those people who are opting out want to keep open the possibility of a future use that they have in mind for their property. So in some cases, Interfaith Ministries for example has an interest in building another one of their Villa's which will require "B" Multi-family zoning and so they would like to keep that area of "B" Multi-family zoning rather than going to "TF-3". So in most cases it has been for that purpose.

MCNEELY There are always property owners who feel that if they retain the highest zoning possible that that is in their best interest. We have a number of people who are using their property for an office use but they have industrial zoning and it has been their perception that if they retain the industrial zoning that is in their best interest.

HENTZEN The map that says, "existing zoning", do you have a map like that on "recommended zoning"?

MCNEELY (shows map on the screen).

HENTZEN I have a question about the summary of Proposed Midtown Neighborhood Rezoning that states, "No property in the plan is proposed to rezone to "SF-5" Single-family."  
I thought that was what you were doing.

JANET MILLER That is a common misperception. We are not actually suggesting that rezone anything to "SF-5" Single-family, we are trying to lower the zoning to a less dense classification but not down to Single-family. The yellow that you see there is Two-family so in all cases if the property is big enough it would allow duplexes.

HENTZEN That is the lowest zoning you are going to. What if a person lives in a "LI" Limited Industrial Zoning now and says I want it zoned Single-family would you let him do that?

JANET MILLER Currently our proposal is not allowing them to do that.

HENTZEN Will the mortgage people that you are having a problem with accept what you are doing and not effect the right people to borrow on their house?

JANET MILLER In general people report to us that they have a harder time getting residential mortgages for homes if the property resides in a commercial or a industrial or limited industrial, area. So presumably the reverse would be true, if it is easier to obtain an residential mortgage in a residential classification of zoning.

HENTZEN We have people living in single-family residences and we are saying we want you to get your zoning right but we will not let them zoned to single-family.

JANET MILLER If that was important to the MAPC that we wanted to allow people to rezoned to single-family, that would work. We assumed there would not be a lot of interest in doing that, because people like to be able to have the option to turn part of their house into an apartment or split it into a duplex.

HENTZEN How many parcels are there?

MCNEELY Over 2,000 parcels.

HENTZEN One more question on Principle #3, it says, "There will be no rezoning fees charged to property owners affected by this rezoning initiative." If somebody opts out now and within the year, two years they want to rezoning will they be charged for rezoning?

JANET MILLER Yes, now is the opportunity to do it for free.

MCKAY It doesn't allow somebody that has a piece of ground that is zoned Duplex now and go Multi-family. You can't increase it.

JANET MILLER Right, we are going one way.

DUNLAP Janet, maybe you and Jess could get together and make an inquiry of a lender about the question of a person who has a Multi-family property compared to a Single-family what the difference in their ability to provide financing and bring that answer back to us.

JANET MILLER Is that your question, "Is it easier to get a mortgage on a Single-family as opposed to a Two-family or "TF-3" zoning?"

HENTZEN My question resolves to the point that one of the reasons that you have used to get us to approve this plan is because the houses where families are living are zoned to a higher level, a commercial level, and that the mortgage companies are not so crazy about loaning on individual homes if the zoning is not right.

MCNEELY The real issue is that when people have a problem refinancing or getting a mortgage on a house is when that residential structure is in non-residential zoning. In this area, generally either commercial or industrial zoning. Much of the older parts of the City is zoned "TF-3" Two-family zoning but is predominately developed with Single-family homes. It retains a little more flexibility in those neighborhoods for the opportunity of a little bit of increased density when that is desired. So the real issue with providing homeowners the opportunity to refinance or sale the real issue is getting non-residential zoning to residential zoning.

HENTZEN I would suggest that you check with the mortgage lenders to understand that with them.

DUNLAP Please include that with your presentation at the public hearing.

**MOTION:** That the Metropolitan Area Planning Commission indicates it support for the final rezoning scheme proposed by the Midtown Neighborhood Rezoning Committee, dated December 14, 2004, and schedule a public hearing on January 27, 2004 at 1:30 p.m. pursuant to State Statute to receive formal public comment and consider adoption of the rezoning scheme as an amendment to the Wichita-Sedgwick County Unified Zoning Code.

**DUNLAP** moved, **GAROFALO** seconded the motion, and it carried (10-0-1) **MCKAY** abstains from vote he owns property in this area.

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❖ **SUBDIVISION ITEMS**

3. Consideration of Subdivision Committee recommendations

3-1. **SUB2004-148 – One-Step Final Plat – THE GATEWAY CENTER SECOND ADDITION, located on the southeast corner of 13<sup>th</sup> Street North and Greenwich Road.**

**NOTE:** This is a replat of the Gateway Center Addition. The Gateway Center Addition CUP (DP-239) was also approved for this site. This replat reflects revised access controls and revised lot sizes.

**STAFF COMMENTS:**

- A. Municipal services are available to serve the site. The applicant shall contact **Debt Management** regarding the submission of a respread agreement.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- D. The plat proposes six openings to 13th St. North and 4 openings to Greenwich Road. The access controls are in accordance with the CUP approval with the exception of one additional opening to 13th St. North between lots 10 and 11. **Traffic Engineering has approved access controls in accordance with the CUP.**
- E. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- F. For those reserves being platted for drainage purposes, the required covenant, which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- G. A covenant shall be submitted regarding Reserves A and B, platted for private drive purposes, which sets forth ownership and maintenance of the private drive.
- H. The plat's text shall replace reference to "private street" with "private drive".
- I. **City Fire Department** has requested verification that a turnaround will be available within Lot 12, Block 1.
- J. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on this property.
- K. The applicant shall submit a copy of the instrument, which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements. Any relocation, lowering or encasement of the pipeline, required by this development, will not be at the expense of the City.
- L. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
- M. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- N. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- O. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- P. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Q. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate

agencies to determine any such requirements.

- R. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- S. Perimeter closure computations shall be submitted with the final plat tracing.
- T. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- U. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. Westar Energy has requested additional easements.
- V. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Departments.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MCKAY** moved, **JOHNSON** seconded the motion, and it carried (11-0).

❖ **PUBLIC HEARINGS – VACATION ITEMS**

**4-1. VAC2004-61 – Request to Vacate Platted Street Right-of-Way and Multiple Setback, located north of 13<sup>th</sup> Street North and east of 143<sup>rd</sup> Street East, on Sport of Kings Road Court.**

**OWNERS/APPLICANTS:**

Renollet Construction Inc      Jim Nunn Construction  
Steven F Rospond              Fahsoltz Construction, Inc.

**AGENT:**

PEC, PA c/o Rob Hartman

**LEGAL DESCRIPTION:**

See attached legal; generally described as the platted 75-foot radius of the Sport of Kings Court cul-de-sac ROW, running parallel to the front lot lines of Lots 7, 8 & 9 and a portion of Lots 5 & 10, all in Block 5, Savanna at Castle Rock Ranch 5th Addition, as recorded Wichita, Sedgwick County, Kansas

The platted 35-foot front yard setback on Lots 6 - 10, Block 5, Savanna at Castle Rock Ranch 5th Addition, as recorded Wichita, Sedgwick County, Kansas

**LOCATION:**

Generally located midway between 159<sup>th</sup> Street East and 143<sup>rd</sup> Street East, north of 13<sup>th</sup> Street North, more specifically south of the Sport of Kings Road – Sport of Kings Court intersection, all on Sport of Kings Court (Sedgwick County – Three mile ring)

**REASON FOR REQUEST:**

Allow more area to build

**CURRENT ZONING:**

Subject property and all abutting and adjoining properties are zoned “SF-20” Single-Family Residential

The applicants are requesting consideration for the vacation of a portion of the platted 30-foot setback and the 75-foot radius of the Sport of Kings Court cul-de-sac all as previously described. The applicants propose the vacation to allow more area to build single-family residences on the lots. The Savanna at Castle Rock Ranch 5th Addition's ROW were platted per the Subdivision's residential suburban standards. There is a water line in the ROW, including the 75-foot radius of the cul-de-sac. The UZC provides a 25-foot front setback for the “SF-20” zoning district. The Savanna at Castle Rock Ranch 5<sup>th</sup> Addition was recorded with the Register of Deeds March 9, 1994.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the platted 30-foot setback and the 75-foot radius of the cul-de-sac as described in the legal description with the following conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
  - 1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter of notice of this vacation proceeding one time December 2, 2004 which was at least 20 days prior to this public hearing.
  - 2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted 30-foot setback and the 75-foot radius of the cul-de-sac and the public will suffer no loss or inconvenience thereby.

3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the platted 30-foot setback and the 75-foot radius of the cul-de-sac described in the petition should be approved with conditions:

- (1) Vacate platted setbacks along on Lots 6 - 10, Block 5, Savanna at Castle Rock Ranch 5<sup>th</sup> Addition and replace with the UZC's current "SF-20" zoning district's front (25-ft) setback.
- (2) Vacate the platted 75-foot radius of the Sport of Kings Court cul-de-sac and replace it with a 50-foot radius, per the Subdivision Standards for a city local residential street.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (4) All improvements shall be according to City Standards.
- (5) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate platted setbacks along on Lots 6 - 10, Block 5, Savanna at Castle Rock Ranch 5<sup>th</sup> Addition and replace with the UZC's current "SF-20" zoning district's front (25-ft) setback.
- (2) Vacate the platted 75-foot radius of the Sport of Kings Court cul-de-sac and replace it with a 50-foot radius, per the Subdivision standards for a city local residential street.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (4) All improvements shall be according to City Standards.
- (5) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MCKAY** moved, **JOHNSON** seconded the motion, and it carried (11-0).

**4-2. VAC2004-62 - Request to Vacate Platted Access Control, located north of 21<sup>st</sup> Street North and west of Greenwich Road.**

<b><u>APPLICANTS/OWNERS:</u></b>	Consolidated Greenwich 21, LLC
<b><u>AGENT:</u></b>	PEC c/o Rob Hartman
<b><u>LEGAL DESCRIPTION:</u></b>	Generally described as approximately 457.5-feet of complete access control running parallel to the Greenwich Road right-of-way and the east lot lines of Lots 2 & 3, Block 1, the Regency Lakes Commercial 2 <sup>nd</sup> Addition, as recorded Wichita, Sedgwick County, Kansas
<b><u>LOCATION:</u></b>	Generally located on the west side of Greenwich Road and approximately 253-feet north of 21 <sup>st</sup> Street North
<b><u>REASON FOR REQUEST:</u></b>	To allow right in – right out turns between Lots 2 & 3, Block 1, the Regency Lakes Commercial 2 <sup>nd</sup> Addition
<b><u>CURRENT ZONING:</u></b>	The site and abutting western property are zoned "LC" Limited Commercial and "LI" Limited Industrial with the same "CUP" Community Unit Plan overlay. Properties south and east of the site, across Greenwich Road, are zoned "LC"; southern property is under same CUP as the subject site. Property north of the site is zoned "LI" with the same CUP as the subject site.

The applicant has applied for the vacation of the complete access control along the site's approximately 457.5-feet of Greenwich Road frontage, to allow one shared, between Lots 2 & 3, right in – right out access. The Manhattan Addition is east of the site across Greenwich Road. The Manhattan Addition is platted with 4 openings, one being a major opening, allowed along its approximately 1,522.25-feet of Greenwich Road frontage. Conceptual plans for improvements to this section of Greenwich Road

indicate a median strip will be constructed. The Regency Lakes Commercial 2<sup>nd</sup> Addition was recorded with the Register of Deeds February 21, 1997.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate a portion of the platted access control as described in the attached legal, with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time December 2, 2004 which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described portion of platted complete access control and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of a portion of the platted complete access control described in the petition should be approved with conditions:
1. Vacate that portion of platted access control along the site's Greenwich Road frontage, as approved by the Traffic Engineer to allow one right-in – right-out shared access. Provide needed plans for review by Traffic Engineer.
  2. Complete adjustment/; amendment to the CUP overlay on the subject site to reflect approved vacation of a portion of platted complete access control, to allow one right-in – right-out shared access.
  3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
  4. All improvements shall be according to City Standards, including any driveways from private property onto public ROW.
  5. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Vacate that portion of access control along the site's Greenwich Road frontage, as approved by the Traffic Engineer to allow one right-in – right-out shared access. Provide needed plans for review by Traffic Engineer.
2. Complete adjustment/; amendment to the CUP overlay on the subject site to reflect approved vacation of a portion of platted complete access control, to allow one right-in – right-out shared access.
3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
4. All improvements shall be according to City Standards.
5. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MCKAY** moved, **JOHNSON** seconded the motion, and it carried (11-0).

**4-3. VAC2004-63 - Request to Vacate Multiple Platted Utility Easements and Reserves, located north of 29<sup>th</sup> Street North and east of 119<sup>th</sup> Street West.**

**OWNER/APPLICANT:** Socora Homes Inc., c/o Larry Chambers

**AGENT:** PEC c/o Rob Hartman

**LEGAL DESCRIPTION:** See attached legal: generally described as a portion of the platted 20-foot utility easement(s) located on Lots 7 –10 & 10 –12 & 26 - 30, Block 1 and Lots 1 – 7, Block 2 and Lots 1 – 8, Block 3 and Lots 9 – 14, Block 4 and the platted 10-foot utility easement located on Lot 25, Block 2, and a portion of the platted Reserves A, D, G, & M, all in the Fontana Addition, Wichita, Sedgwick County, Kansas.

**LOCATION:** Generally located north of 29<sup>th</sup> Street North and east of 119<sup>th</sup> Street West (City of Wichita)

**REASON FOR REQUEST:** Relocation of utility easements and to establish a 5-foot wall easement.

**CURRENT ZONING:**

Subject properties and all of the Fontana Addition are zoned "SF-5" Single-family Residential.

The applicant proposes to vacate a portion (that portion abutting the 119<sup>th</sup> Street West & the 29<sup>th</sup> Street North ROWs) of multiple platted easements and reserves (need new legal) all located in the Fontana Addition. There are no water or sewer lines in the easements; pending comments from the franchised utilities. The applicant proposes to replace the portion of the vacated easements and platted easements. Reserves A, D, G & M are platted for "...landscaping, entry monuments, drainage, sidewalks and utilities confined to easements." These reserves are to "...to be owned and maintained by an owners association to be formed within Fontana." There are no water or sewer lines in the easements; pending comments from the franchised utilities. The Fontana Addition was recorded with the Register of Deeds September 8, 2004.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the platted easements and reserves as described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time December 2, 2004 which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described platted easements and reserves and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted easements and reserves described in the petition should be approved with conditions:
1. Provide Staff with a copy of any additional easements dedicated by separate instrument, as needed by Public Works, Water & Sewer, Storm Water and franchised utilities.
  2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
  3. Provide Public Works and franchised utilities with any needed plans for review for location of utilities. If needed, provide guarantee or petition for extension of sewer and water service. Contact the City of Maize, which has a water line(s) in the 119<sup>th</sup> Street West ROW.
  4. Provide a restrictive covenant defining uses, ownership, maintenance and other obligations for the replacement reserves per the legal description. Establish ownership and legal description of vacated reserves to prevent them from becoming unplatted properties.
  5. All improvements shall be according to City Standards.
  6. All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Provide Staff with a copy of any additional easements dedicated by separate instrument, as needed by Public Works, Water & Sewer, Storm Water and franchised utilities.
2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
3. Provide Public Works and franchised utilities with any needed plans for review for location of utilities. If needed, provide guarantee or petition for extension of sewer and water service. Contact the City of Maize, which has a water line(s) in the 119<sup>th</sup> Street West ROW.
4. Provide a restrictive covenant defining uses, ownership, maintenance and other obligations for the replacement reserves per the legal description. Establish ownership and legal description of vacated reserves to prevent them from becoming unplatted properties.
5. All improvements shall be according to City Standards.
6. All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void

**MOTION:** To approve, subject to staff comment and citing the findings in their report.

**MCKAY** moved, **JOHNSON** seconded the motion, and it carried (11-0).



**4-4. VAC2004-64 – Request to Vacate Platted Setbacks, Utility Easements and Street Right-of-Way on Multiple Lots, located north of Central Avenue and west of Tyler Road.**

**OWNERS/APPLICANTS:** Malibu Development Group LLC, c/o Davis Dettwiler

**AGENT:** Poe & Associates c/o Tim Austin

**LEGAL DESCRIPTION:** See attached legal; generally described as the north 10-feet of the platted 20-foot easement that runs parallel to the south lot lines of Lots 9 - 16, Block B, Four H Addition, as recorded Wichita, Sedgwick County, Kansas

See attached legal; generally described as vacating 26-feet of the platted 58-foot Waddington Court ROW running parallel to the front lot lines of Lots 1 –5, Lots 12 –16 and a portion of Lots 6 & 11 and vacating 13-feet of the platted 50-foot radius of the Waddington Court cul-de-sac ROW, running parallel to the front lot lines of 7, 8, 9, & 10 and a portion of Lots 6 & 11, all in Block B, Four H Addition, as recorded Wichita, Sedgwick County, Kansas

The platted 25-foot front yard setback on Lots 1-16, Block B, Four H Addition, as recorded Wichita, Sedgwick County, Kansas

**LOCATION:** Generally located north of Central Avenue and west of Tyler Road, on both sides of Waddington Court (City of Wichita)

**REASON FOR REQUEST:** Allow more area to build

**CURRENT ZONING:** Subject property is zoned "TF-3" Two-family Residential. Property to the south is zoned "LC" Limited Commercial, property to the east is zoned "GO" General Office, and property to the north and west (across Waddington Street) is zoned "SF-5" Single-Family Residential

The applicant proposes to vacate the Waddington Court ROW and the platted 25-foot front setback that runs parallel to the ROW and replace them with the Subdivision's 'Narrow Local Residential Street' standards (see attached SD exhibit). This type of street design is intended for limited use in duplex development (one of several uses) in cul-de-sacs. The applicant proposes to vacate the north 10-feet of the platted 20-foot utility easement that is located along the south lot lines of Lots 9 – 16. There is no water or sewer in the platted easement; pending comments from franchised utilities. The Four H Addition was recorded with the Register of Deeds April 1, 1993.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate a portion of the platted 20-foot easement, the platted 25-foot setback and a portion of the platted street ROW and a portion of the radius of the cul-de-sac as described in the legal description with the following conditions.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time December 2, 2004 which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted 20-foot easement, the platted 30-foot setback and the 75-foot radius of the cul-de-sac and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of a portion of the platted 20-foot easement, the platted 25-foot setback and a portion of the platted street ROW and a portion of the radius of the cul-de-sac as described in the petition should be approved with conditions:

1. Vacate the platted Waddington Court ROW, including the cul-de-sac, and the platted 25-foot front setback. Replace, by dedication by separate instrument, with the Wichita – Sedgwick County Subdivision Regulation's 'Narrow Local Residential Street' standard, which includes a 15-foot street and drainage easement running parallel to the new ROW and a 20-foot setback, running parallel to the new ROW. Replace, by dedication by separate instrument, the 50-foot radius of the platted cul-de-sac with the proposed 37-foot radius for the cul-de-sac. The platted 25-foot setback running parallel to the radius of the cul-de-sac will be replaced with a 20-foot setback running parallel to the new radius. Provide Staff with necessary dedications.
2. Provide plans for review by Public Works/ Water and franchised utilities for location of water, sewer, and franchised utilities. Retain the platted 20-foot utility easement located parallel to the south lot lines of Lots 9 –16, the Four H Addition, until plans for location of all utilities have been approved. Vacate that portion of the platted 20-foot utility easement located parallel to the south lot lines of Lots 9 –16, the Four H Addition, as approved by all utilities.
3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.

4. All improvements shall be according to City Standards.
5. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Vacate the platted Waddington Court ROW, including the cul-de-sac, and the platted 25-foot front setback. Replace, by dedication by separate instrument, with the Wichita – Sedgwick County Subdivision Regulation's 'Narrow Local Residential Street' standard, which includes a 15-foot street and drainage easement running parallel to the new ROW and a 20-foot setback, running parallel to the new ROW. Replace, by dedication by separate instrument, the 50-foot radius of the platted cul-de-sac with the proposed 37-foot radius for the cul-de-sac. The platted 25-foot setback running parallel to the radius of the cul-de-sac will be replaced with a 20-foot setback running parallel to the new radius. Provide Staff with necessary dedications.
2. Provide plans for review by Public Works/ Water and franchised utilities for location of water, sewer, and franchised utilities. Retain the platted 20-foot utility easement located parallel to the south lot lines of Lots 9 –16, the Four H Addition, until plans for location of all utilities have been approved. Vacate that portion of the platted 20-foot utility easement located parallel to the south lot lines of Lots 9 –16, the Four H Addition, as approved by all utilities.
3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
4. All improvements shall be according to City Standards.
5. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MCKAY** moved, **JOHNSON** seconded the motion, and it carried (11-0).

❖ **PUBLIC HEARINGS – ZONING ITEMS**

5. **Case No.: CON2004-42** – Frederick and Jo Ann Barnes, Gregory Schmidt, and David Becker (owners); Darnell Thompson (agent) Request Conditional Use to permit a nightclub located within 200 feet of a residential zoning district on property described as;

Lots 2-16 even on Cleveland, Corwin's Addition, Wichita, Sedgwick County, Kansas, and Lots 36 and 37 on Mathewson, Shirk's Addition, Wichita, Sedgwick County, Kansas. Generally located North of Central and west of Cleveland.

**BACKGROUND:** The applicant requests a Conditional Use for a nightclub in an existing building, currently housing a dance hall with no liquor license. Nightclubs are a permitted use in the LI and GC districts, but require a Conditional Use when within 200 feet of residential zoning. The application area is currently permitted for a dance hall/cabaret, but cannot sell or serve alcohol. Approval of a nightclub Conditional Use would allow the applicant unlimited liquor sales. The application areas abut, or are across an alley from five single-family residences, and across a local street from another single-family residence. Both sites are within the North Industrial Corridor Contaminated Area.

The .79-acre site of the proposed nightclub is located north of Central and west of Cleveland; proposed off-site parking is located north of Central and west of Mathewson, one block east of the proposed night club. The accessory parking is necessary to meet the proposed nightclub parking requirement. The character of the surrounding area is a mixture of general commercial uses along Central; industrial uses nearby, and residential uses on Cleveland and Mathewson Streets. The residences in this area show significant decline. North of both sites are single-family residences and vacant lots; south of both sites are LI and GC zoned commercial uses. East and west of the application area are commercial uses and single-family residences. South of the proposed nightclub, across Central, is a restaurant with a DER (restaurant / drinking establishment) license, limiting liquor sales to 50% of sales. Two blocks west of the application area, on the south side of Central at Pennsylvania, is Washington Elementary School with a significant recent addition and improvements.

**CASE HISTORY:** The Conditional Use application area was platted as a part of Corwins and Shirks Additions; the proposed nightclub building was built in 1955.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"LI", "GC", "B"	Vacant property, single-family residences
SOUTH:	"LI", "GC"	Vehicle sales, Restaurant
EAST:	"LI", "GC"	Vehicle sales, office
WEST:	"B", "GC"	Single-family residences, Vehicle sales, Retail

**PUBLIC SERVICES:** The subject property fronts Central, which is a five-lane arterial street with an 80-foot right-of-way at this location. The current traffic volume on Central is approximately 15,441 vehicles per day. Cleveland and Mathewson are local

streets with a 60-foot right-of-way. The 2030 Transportation Plan designates that Central will remain a five-lane arterial. The subject property has all other public utilities.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" development, and a portion of the parking area as appropriate for "Low Density Residential" development. The Comprehensive Plan "Residential Area Enhancement Strategy Map" identifies the application area as within the targeted "Revitalization" Area. The plan recommends stabilization and revitalization within this area, making the area more attractive for private investment.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Comprehensive Plan Objective II.B. is to "Minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments."

**The Unified Zoning Code requires a Conditional Use for a nightclub when it is located within 200 feet of residences. As the application area is not currently permitted as a tavern or drinking establishment, approval of a nightclub Conditional Use would introduce a drinking establishment on this site.**

**RECOMMENDATION:** Neighbors notified of this application have contacted MAPD in opposition to the requested Conditional Use for nightclub. Staff has received one protest petition, and one letter opposing the nightclub. Opposition cites concerns regarding the potential for illegal and dangerous activity from the proposed nightclub and associated parking.

Staff acknowledges that surrounding housing is deteriorating, and could be absorbed by surrounding commercial and industrial uses in the future. However, recent public investments in the area, and the neighborhood revitalization policies of the Comprehensive Plan indicate a desire to improve the neighborhood.

Based upon information available prior to the public hearings, planning staff recommends that the request for a Conditional Use be DENIED.

**This recommendation is based on the following findings:**

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is a mix of commercial and industrial zoning and uses along the Central corridor; and, deteriorating single-family residential uses within commercial, industrial, and multi-family zoning to the north of that corridor. The neighborhood has recently been improved with additions to the Washington Elementary School, two blocks east of the application area. A total of five single-family residences abut or are across an alley from the application area. Another single-family residence is across Cleveland, a local street, from the application area. While the requested Conditional Use is not out of character with the other businesses fronting Central, a nightclub and associated parking is out of character with nearby single-family residences due to late hours and noise concerns.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "GC" General Commercial and "LI" Limited Industrial, which accommodate office, retail, commercial and industrial land uses. The site is currently used as a dance hall without a liquor license, and can continue to operate under the current zoning and restrictions.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Currently the sale of alcoholic beverages is prohibited on this site. Approval of this request would allow for unlimited liquor sales, which could have detrimental impacts on the surrounding residences, considering their proximity to the proposed nightclub and associated parking.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" and "Low Density Residential" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Comprehensive Plan does not contain guidelines specifically for nightclubs, drinking establishments or taverns. However, the Plan does have an objective to minimize detrimental impacts of higher intensity land uses located near residential living environments. The Comprehensive Plan identifies the application area as within the targeted Residential "Revitalization" Area. The plan recommends stabilization and revitalization within this area, making the area more attractive for private investment.
5. Impact of the proposed development on community facilities: It is possible that approval of this request could result in an increased demand for police services.

**However, should the MAPC find this application acceptable, staff recommends the following conditions for the Conditional Use:**

1. The subject property shall be developed in general conformance with the approved site plan and all property development requirements of the Unified Zoning Code.
2. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

DENISE SHERMAN Stated she had a conflict of interest and will be abstaining from this portion of meeting.

BARFIELD I would like to ask a procedural question. I notice on this item that we have a letter that is unsigned; that is from a concerned citizen. I don't ever recall having received or included in our package this type of a letter. Is this normal procedure?

MCNEELY We are not familiar with who submitted the letter. They submitted it to the Planning Department, and there is a policy that anything that is submitted to staff, that we will pass that onto the Commissioners.

BARFIELD I have a problem with this and we should ignore it. I do not think this appropriate.

MCNEELY What is written at the bottom of that letter is Platinum II, and then the address that refers to the business that has requested the Conditional Use.

MILLER When we provide these to you we are providing them to you because they are submitted to us. Staff does not want to be in the position where someone can accuse us of withholding information from the Commission, so we submit what is given to us. We are not suggesting that there is proof or falsehood to whatever we give you. It is up to you to weigh what you get on your own merit, and that however your factor that in is up to you. We don't feel we can be a screen, and pick and chose on what you get and what you don't, so we just pass along whatever we get.

BARFIELD I can understand and appreciate that, but if somebody stands here in person and they want to address this body, the first thing they do is give their name and address. My question is what would we do if they refused to give their name and address.

MILLER That would be up to the Commission. There is nothing in our procedural requirement that forces us to make people submit their name and address when they submit a communication to us.

BARFIELD This is serving a bad precedent.

MILLER If that is the will of the entire Commission you could direct staff that you don't want to see letters that are not signed, and you could establish whatever policy you want.

DUNLAP That is not something I want to do in the middle of this case.

MCNEELY The agent for the applicant, Darnell Thompson, has just asked staff if he could defer the case, and we will turn that back over to the Planning Commission. If that is your choice to discuss deferring now, or if you would like to direct staff to give the presentation we can do that as well.

MITCHELL How many people are here in the audience to speak on this case?

AUDIENCE (Raise hands)

MITCHELL Seeing that I would not recommend that we defer.

BARFIELD What is the reason for the deferral?

MCNEELY The agent does not feel prepared to stand before this body.

MARNELL The length of time that I have been on this Commission I cannot personally recall when the applicant has requested to have a delay and we haven't granted that request. We may have gone ahead and listened to the public but we delayed the process is courteous of the applicants.

**MOTION:** Deferral until January 13<sup>th</sup> after we hear the public that is present at todays meeting to speak.

**MARNELL moved, MCKAY seconded the motion.**

MCKAY I don't mind seconding this motion. In the past, when there has been public present at the hearing we have heard their comments and then deferred; the public hearing would still be later on. That way if there are people who have taken off to be here, at least, we can get that portion done today.

WARNER Point of order, is it appropriate to hear it and then the motion to defer at the end rather than the beginning?

**MARNELL withdraws his motion  
MCKAY withdraws his second.**

MCNEELY Presented the staff report. Staff is recommending denial.

MCKAY Please show on the aerial where the school is at.

MCNEELY Shows on the aerial, at the northwest corner of the school site.

WARNER Between the proposed parking and the site, are those residences? Are they occupied?

MCNEELY Yes, they are occupied.

WARNER Looks to me like they are going have people taking a direct route to the club, and you have a problem there.

BARFIELD Jess, do you have an aerial of the proposed parking?

MCNEELY Shows on the map, this is the proposed ancillary parking, and this here is the parking contiguous with the nightclub site building.

BARFIELD How many parking spots are there in that current parking area?

MCNEELY There is a site plan attached to your staff report. There is an 80-car requirement. The ancillary parking is providing 19 of those spaces so that tells me that the balance is 61 in this parking area right here.

BARFIELD How many homes are within 200 feet of this?

MCNEELY I believe there are five homes immediately adjacent to either of the sites and two homes across the street, so within 200 feet there is a minimum of seven homes. There may be more than that.

BARFIELD How many of those are occupied?

MCNEELY When I did an analysis with our data base that has the most up to date tax information, I only found one home that was listed as vacant, and that would be just north of the nightclub site with the parking.

GAROFALO Looking at the site plan, it shows open beauty shop, shop II, shop III and shop IV. Are these businesses that are opened? Where is the cabaret now?

MCNEELY If you look at the site plan, the largest portion of the building there lists itself as 3,588 square feet, 80 cars, that is where the nightclub would go. The rest of the shops are other businesses that are right there in the same shopping area.

GAROFALO The cabaret now would remain the same size. They are not going to take over the whole shopping center?

MCNEELY They would be restricted by this site plan, and this site plan only designates that one portion of the building for the nightclub.

GAROFALO Does this cabaret, does it function everyday, or just weekends, currently?

MCNEELY Currently, it operates as a dance hall that cannot sell or serve alcohol. I don't know if it is operating daily, or only when rented out currently.

DARNELL THOMPSON I am the owner of D.T.'s Platinum II restaurant/nightclub. I will be happy to answer any questions.

WARNER Why do you want this case deferred?

THOMPSON I would ask for a 30 day deferral because I haven't received this staff report, or protest. I am open Friday and Saturdays, currently as a restaurant/dance hall. I do have service and sell alcohol. The parking lot that you have asked about, I lease that parking lot to make up for the occupancy that I was required to have. I have pictures of the parking lot before and after I reconstructed the area because when I got into it the building was considered condemned. I reconstructed it to the full amount according to zoning, planning, blue prints, handicap, etc.

WARNER So your reason for deferring is just the fact that you just got this staff report, and are not prepared to deal with the protest and the information in the report at this time?

THOMPSON Yes, the protest that I am reading in front of me, refers a building that is a block away, and the business next to me, which is Alan's Appliance. I speak with him on a daily basis and he has no problem. I have been open since Labor Day weekend.

WARNER He is welcome to come to this hearing and tell us that.

THOMPSON Right, he told me that he received his letter of this hearing. The Spurrier Chemical, what I have been reading, I am leery about allocations so I would like a chance to speak with him because everybody along Cleveland I have spoken with, and if they have any concerns, they have my number and they can give me a call. I have not had any problems or concerns since I have been open. I have been at this business for 1 1/2 – 2 years. It took me a year or so to build it and reconstruct it, and I have been open, like say, since September. I have worked with Officer Kimball the Community Police. There have been no citations or nothing regarding my place. I have not spoken with Spurrier Companies because, to my knowledge they were more than 200 feet from me, so I never thought there would be an issue with them. The vacant lots behind me, which is about four of them, which I am a member of the Elk's Club; and we own the lot which used to be a part of the church, and the lodge owns that which they just sold to the church recently. I have spoke to adjacent residences and they don't have a problem with this request. In fact they have come to my business a couple of times. I would like to speak with Spurrier Companies and clear up their concerns.

BARFIELD How many of these people are here to speak in opposition?

AUDIENCE Approximately eight people raise their hands.

BARFIELD Mr. Thompson, you said you haven't had any complaints from neighbors, have you talked to any of these people?

THOMPSON I have never saw half of them.

BARFIELD I think you can see that there is opposition, and these people are here to speak in concern of their neighborhood.

GAROFALO If this were to be approved, what is your intention of operation of this business? Are you going to be open everyday, every night? Will this still be a restaurant?

THOMPSON My venue is to serve lunch from 11:00-3:00, Friday, Saturday, and Sunday's. I am opened as a restaurant/nightclub because I have a stage, and will have live entertainment.

GAROFALO What about during the week?

THOMPSON During the week I will be open afternoons. Right now my hours are set from 10:00-3:00 because I don't serve alcohol.

GAROFALO If this is approved, what is your intention? How will you operate, like days, hours?

THOMPSON If my request is granted, I will open for lunch everyday from 11:00-3:00, weekends, Friday and Saturday, the same for a restaurant/nightclub. It will be a nightclub on the weekends because I will have certain events that will take place in the evenings.

GAROFALO What about at night?

THOMPSON I will have events that will take place in the nighttime, live bands and stuff like that.

GAROFALO I don't think I am getting a straight answer from you. I want to know if this is approved and you get your liquor license or whatever you need to operate a nightclub, are you going to be open during the day and all night until 2:00-3:00 a.m.?

THOMPSON I will be open during the day and during the evening.

GAROFALO What hours are you thinking about?

THOMPSON The hours that I have now, are 11:00-3:00 p.m. Monday – Saturday. The Friday and Saturday from 10:00 p.m. – 2:00 a.m.

GAROFALO Just of Friday and Saturday.

THOMPSON Correct.

DUNLAP What we will do we will ask the people here today to speak and they will be writing their names down because they are speaking, and we have decided we will not be making a decision on this today, and we will be deferring it in order to give you a chance to meet with them and expect for you to do that.

CURTIS L. MARLOWE, 542 N. Indiana, 67214 I am a pastor at the Immanuel House of Faith Christian Center and we have been there since March 2003, which was the old Elks Club. When we came into this area we revitalized the area, and then we wanted to build up the community where we are at. We have had community carnivals and invited the Fire Department, Police Department out so that we may be known in our community. Recently we have purchased the four lots adjacent to the parking lot and another two lots, and our plans are to purchase all that area for future buildings. We are talking about putting in daycares, adult care, and before and after school programs, different things to build up the neighborhood. Since I have been in this area I have found condoms, and everything else around the church, and we have really tried to clean this area up. We have called the police a few times. The area that we bought we cleared out everything and we want this community to be beautiful. I know what clubs are about, the drinking, shootings, which will bring a community down.

JAMES W. NEVILS, 668 Wetmore Street, Wichita, 67209, I am one of the Associate Pastors at the Immanuel House of Faith Christian Center. I have a concern with the proposal because of the fact that I have never heard of any dance hall or nightclub being an asset to any community where you have residences, and children or elderly people, and having them open at hours at 2:00 – 3:00 a.m. The owner of this establishment made a statement that he did not have any complaints but he says that he says that he hasn't spoken to anyone in the area except for the business owners right next door to him. There are people in the community that have concerns because of the activity that used to go on in the neighborhood before the church came in. This request is going back to the way that it used to be. There is nothing positive about alcohol and clubs except for those who want to be entertained.

MCKAY Has the applicant's operation created any problems today in the neighborhood?

NEVILS Not to my knowledge.

LINDA MARLOWE, 542 N. Indiana Street, Assistant Pastor, Immanuel House of Faith Christian Center. Also in this area is an Alcoholic's Anonymous meeting house right up the street, and if we are trying to better the people that have a problem with alcohol, and we put a club in here and they can have access right down the street and receive alcohol, I don't think that will be a benefit for them. Also, because we are a church and we just bought land that is right behind the place, and we have future plans for the community and to better family values. We want a place and community center to have families come in our church and bring them together.

WARNER Will you point on the map where the church is located?

MARLOWE She indicates on the map.

ROBERT SMITH, 542 N. Indiana Street, Outreach Immanuel House of Faith Christian Center. We have been out in the neighborhood. I want to go back to past history, where our church is where the old Elk's used to be. There was killing, shootings, and all kinds of activity that surely started out like this applicant is wanting to do now. But in the end result, in this you end up with

that gangs, and bad activities. After 2:00 a.m. when the clubs close people are not going home, they have had enough liquor in them and they want to hang out. We are trying to help this neighborhood.

BARFIELD You said that you spoke to people in the neighborhood; I am disappointed because I don't see any residences here to speak in opposition. Have you spoken to any of them?

SMITH We talked to them about our plans and our church and building up the neighborhood, and our plans opening up a daycare, adult care, but we haven't talked to anyone in the neighborhood opposing this nightclub.

GAROFALO Can you point out where the A.A. building is?

SMITH Points on the map.

OMPAUL CHAUHAN, 31 LAUREL, WICHITA, KS 67206 I own several properties that are directly across from this proposed nightclub. My houses are not dilapidated because I have remodeled every one of them and they are in good condition. I would like these properties to remain single-family residences for the family. The "Unified Zoning Code" itself prohibits having a nightclub within 200 feet, and I think there is a very good reason for that. If there was a shortness of nightclubs in Wichita then there might be a reason to approve this request. Mr. Thompson has stated that he is operating of a cabaret club. I have seen and talked to some of the people that come out of that place that are drunk and high on drugs. I have spoken to the neighbors, and I we will start a protest petition and we will have more than 20 percent of the people sign the protest. I do not think that it is appropriate to defer this request and want this request denied today.

DUNLAP We will close the public hearing now, and give the applicant time for rebuttal.

BARFIELD I have a questions for the applicant. You indicated that you have remodeled this property, what did you initially intend to house in that location?

DARNELL THOMPSON To my background check, the building had been vacant for at least six years, noted to be condemned. I remodeled it as a restaurant/nightclub, drinking establishment. I have put a lot of money into this place.

BARFIELD Initially you remodeled this property for a club? Were you aware that it did not have the right zoning for a club?

THOMPSON I was not aware of the drinking establishment restriction because of the fact that it was already a nightclub already across the street from me for several years. When I got into the building and built it and got to the end of the process the DER license is what came in place, everything else zoning wise I was in place. I wasn't aware the neighborhood was against drinking when there was already a nightclub right there 20 feet from my door. I took a building that was condemned and it has taken me a year to remodel it. I have been open since September as a restaurant/nightclub and don't sell alcohol.

DUNLAP I am not sure what the Commission is going to do here today, if they don't defer this request I need to give you an opportunity to give rebuttal to what these people have said. I will offer you that opportunity now, and if we elect to defer it you will not have that opportunity again, so today is the time, and now is the time if you want to speak to any of the comments made by these people.

THOMPSON According to the church, I am a member of the Elk's lodge. It was my decision to okay them because the property actually, because I have the document lease agreement for the property that they have. It was my decision to let them purchase it. Part of the reason was, the other parking lots that I do have, I pay a monthly fee, and my proposition was to let them take it because my financial was down so I could not afford to do another parking lot. Knowing the church wanted it I was going to offer to them a donation to use the parking lot, keep it clean since it is my lot. I understand what the man is saying about the residences across the street, most of them come to my restaurant. Everyone that I have talked to that are 200 feet or more are glad to see that I have taken a condemned building and remodeled it, and made it something. I have not had complaints and I have been operating since September as a dance hall/cabaret. My venue is to have live entertainment once a month. I have had an election party there. The church is putting a parking lot behind me and I don't see where that would affect them thinking a restaurant in the afternoon and a nightclub is Friday and Saturday night.

DUNLAP closed the public hearing again.

**MOTION:** Deferral until January 27<sup>th</sup> and open the public hearing at that time.

**MARNELL** moved, **MCKAY** seconded the motion.

HENTZEN Commissioner Barfield in looking at this protest petition where you talking about the one that is signed by Spurrier Chemical or the letter after that?

BARFIELD I wasn't referring to the protest petition, I was referring to the unsigned letter.

JOHNSON I think the motion maker should suggest the applicant to have a meeting with the neighborhood, or the church because if they don't get together I don't know if we will hear anything new when they come back.

MARNELL If he doesn't that will make a lot of Commissioners minds up probably.

**MOTION CARRIED:** 10-0-1 **SHERMAN** abstains.

MARNELL I think at one of our workshops sometime we should talk about how we do handle these kind of things because we have done them a variety of ways; because we have deferred things and we have had some bizarre circumstances happen where we

would say that we were not going to have it but then maybe something was published in the paper, and the case was coming back and it wasn't a public hearing because the public hearing was closed and if we are going to defer these things, they ought to be clean. I don't know that it makes a difference whether there is someone here or not in terms of what we do by policy. It would be nice if we could clean that up.

SCHLEGEL We can look at this.

WARNER When is the normal time when they get the staff report?

MILLER The packets are mailed out the same time your packets are mailed out, the Friday before the MAPC meeting.

6. **Case No.: ZON2004-61** – Steve & Susan Walsh Brandon & Julie Walsh Tamara Walsh Request Zone change from “SF-5” Single-family Residential to “MF-29” Multi-family Residential to develop multi-family housing on property described as;

A tract in the Northwest Quarter (NW/4) of the Southwest Quarter (SW/4) of Section Twenty-four (24), Township Twenty-seven (27) South, Range One (1) West of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at a point 660 feet South and 431 feet East of the Northwest corner of the Southwest Quarter (SW/4) of said Section Twenty-four (24); thence North parallel to the West line of said Quarter Section 210 feet; thence East parallel to the North line of said Quarter Section, a distance of 220 feet; thence South 210 feet; thence West 220 feet to the Point of Beginning.  
Generally located on the northwest corner of McComas and 1<sup>st</sup> Street.

**BACKGROUND:** The applicants' 1.06-acre unplatted tract is zoned “SF-5” Single-family Residential. There is currently a single story, brick, single-family residence (built 1950) on the subject site. The applicants are requesting consideration for a zoning change of “MF-29” Multi-family Residential to allow the subject site to be redeveloped with triplexes or apartments. The “MF-29” zoning would allow 30 units on the subject site.

The abutting and adjacent properties to the east and north of the subject site are zoned “SF-5” and are developed as single-family residences, built primarily from the late 1950s to the mid 1960s. Properties southeast of the subject site are zoned “TF-3” Two-family Residential and are developed primarily as single-family residences, built in the 1920s and 1930s, and duplexes built in the late 1960s to the mid 1970s. The abutting property west of the subject site is zoned “LC” Limited Commercial and was developed in the late 1990s as a contractors warehouse, office and yard. This “LC” site has access and frontage onto West Street, a commercial corridor. Properties south and southwest of the site are zoned “B” Multi-family Residential and “LC” and are developed as story and a half apartments, built in the early 1970s. The applicants own these apartments.

**CASE HISTORY:** The 1.06-acre unplatted site has an existing single story, brick, single-family residences on it, built in 1950. DAB VI considered the request at their December 15, 2004 meeting and recommended denial of the requested “MF-29” zoning. The DAB found the density of the “MF-29” out of character with the surrounding area. The DAB recommended “MF-18” Multi-family Residential zoning with a Protective Overlay that would limit the development to no more than 9 units on the site and subject to platting within a year. No member of the public in attendance at the DAB meeting spoke against the requested zoning change. Staff has received a recorded protest.

**ADJACENT ZONING AND LAND USE:**

NORTH:	“SF-5” Single-family residential	Single-family residential
EAST:	“SF-5” Single-family residential	Single-family residential
SOUTH:	“LC” Limited commercial	Apartment, Single-family residential
	“B” Multi-family Residential	duplexes
	“TF-3” Two-family Residential	
WEST:	“LC” Limited commercial	Contractors warehouses, offices &
	“TF-3” Two-family Residential	yards, dental office

**PUBLIC SERVICES:** McComas Avenue is a paved residential street that ends at its intersection with 1<sup>st</sup> Street at this location. North of the subject site McComas Avenue re-emerges as one block cul-de-sac, abutting the north side of subject site and ending at its intersection with 2<sup>nd</sup> Street. 1<sup>st</sup> Street is a partially paved (paved sections are broken up by unpaved sections) residential street that ends at its intersection with Gow Street, six short blocks east. A recent zoning case (ZON04-45) with an attached platting case (SUB04-126) will vacate the unimproved section of 1<sup>st</sup> Street from West Street to the west side of the subject site. An unimproved half section of 1<sup>st</sup> Street, abutting the subject site's south side is all that remains of 1<sup>st</sup> Street, west of McComas Avenue. The subject site does have access to Douglas Avenue, an arterial, from McComas Avenue. Average Daily Trips (ADT) at the Douglas – West intersection, one block west and south of the site, is 22,971 ADTs north, 24,279 ADTs south, 7,452 ADTs east and 3,509 ADTs west. There is a current Capital Improvement Project underway, that could affect the subject site. Drainage improvements, with a underground storm water line, will run from West Street east along or under 1<sup>st</sup> Street to Athenian Boulevard then to the Arkansas River. A southern portion (as well as the unimproved section of 1<sup>st</sup> Street abutting the subject site's south side) of the applicants' site appears to be located within the proposed construction area. There is gas, water, sewer and electricity for the site.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for “Low Density Residential” development. The “Low Density Residential” category provides for the lowest density (1 to 6 units per acre) of urban residential land use and consists of single-family detached homes, zero lot line units, cluster subdivisions, and planned developments with a mix of housing types that may include townhouse and multi-family units. Multi-family Residential is considered either a medium density or high-density residential use; a triplex is considered multi-family residential development. The residential locational guidelines of the Comprehensive Plan for medium density or high density residential use states that these developments should have direct access onto arterials or collector streets. The subject site does not have direct access to either an arterial street or a collector street, but can access onto Douglas Avenue (an arterial, a block south) off of McComas Avenue (a



residential street) or onto 2<sup>nd</sup> Street (an arterial, a block northeast) off of 1<sup>st</sup> Street and then Alvena Street, which are both residential streets. The applicants' tract is also located in a revitalization area, which is an area that has experienced some decline but still has good market and development opportunities. Physical improvements and flexibility of regulations are recommended by the Comprehensive Plan to create innovative and economically feasible projects in the area.

**RECOMMENDATION:** Based on the information available prior to the public hearing, staff recommends the application be APPROVED, for "MF-29" Multi-family Residential zoning, subject to platting within a year, all site development requirements, including screening and landscaping for multi-family residential zoning when it is adjacent to single-family or two-family residential zoning.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. The surrounding area around the subject site is zoned "SF-5" "TF-3", "LC" and "B". Use of the surrounding area north, south and east of the subject site is predominately single-family residential, some two-family residential, and the applicants' existing apartment complex. There are contractors' warehouses, offices and yards and a dental office west of the subject site. There is also small stand-alone commercial development and parking located along both sides of McComas Avenue south and east of the applicants' existing apartments and south of existing single-family residences.
2. The suitability of the subject property for the uses to which it has been restricted. The site is developed with a single-family residence and could continue to be used for single-family residential, although the commercial & nonresidential uses abutting its west side have probably made this type of development less desirable.
3. Extent to which removal of the restrictions will detrimentally affect nearby Property: The "MF-29" zoning district would provide a transitional zoning between the abutting single-family and duplex residential development and the existing commercial development. The "MF-29" zoning would provide the applicant an extension of their properties, south of the subject site, currently zoned "B" Multi-family Residential but at a lesser density.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Comprehensive Plan shows this site as appropriate for low density residential. The Comprehensive Plan allows a mix of housing types that may include townhouse and multi-family units in the low-density residential areas. The applicants' tract is also located in a revitalization area, which is an area that has experienced some decline but still has good market and development opportunities. Physical improvements and flexibility of regulations are recommended by the Comprehensive Plan to create innovative and economically feasible projects in the area. The zoning change would allow the applicants to expand their existing apartment complex. The Planning Commission has a policy of generally supporting the expansion of existing businesses.
5. Impact of the proposed development on community facilities: The impact of this development on the community facilities will be minimal, with the exception of an expected increase in local traffic generated by the proposed multi-family residential development.

BILL LONGNECKER Planning staff presented the staff report. The applicant would like to change his request to "MF-18", which is a step below "MF-29".

The District Advisory Board VI considered this request at their December 15, 2004 meeting, they recommended the denial of the "MF-29" zoning. They recommended "MF-18" zoning with a Protective Overlay, with the only provision of the Protective Overlay limiting the number of units on this site to nine units.

MITCHELL The route from West Street to the paved part of 1<sup>st</sup> Street, how much of this application will have to do with the availability of that route?

LONGNECKER This section of 1<sup>st</sup> Street is the only portion of 1<sup>st</sup> Street that is left. 1<sup>st</sup> Street west of the site was vacated as the result of a previous zoning case that required that western property to be replatted. The applicant's site will have to be platted, and during the platting process I fully expect that this last remaining portion of 1<sup>st</sup> Street to be vacated. Because the applicant owns the properties to the north and south, I don't think we will have an issue with the reversion of the right-of-way to private property. This case, if approved will result in the vacation all of 1<sup>st</sup> Street west of McComas. Thus the site will have no access to West Street. This portion of undeveloped 1<sup>st</sup> Street would be set aside for a drainage easements for the storm drainage project, which is going on right now.

MITCHELL Is that what the clearing was?

LONGNECKER Yes, the underground drainage project will follow 1<sup>st</sup> Street to Gow Street, where it dead ends, then through the properties that the City has bought that are on the east side of Gow Street. It will continue east through properties the City has bought on Sheridan, then continue east down 1<sup>st</sup> Street over to Athenia and then north to the river.

MITCHELL Will that leave enough for his project?

LONGNECKER Yes. We have talked it over with Traffic Engineering, also the Fire Department in regards to access, and both felt there was enough property to allow access onto McComas, and allow the applicant to provide a turn around on the site.

MITCHELL The storm sewer project, once they take what they need will there be enough left for what he has to do?

LONGNECKER That has not been determined yet.

MITCHELL Don't you think it would be appropriate to know that?

LONGNECKER Yes, and we have told the applicant to get with Public Works to get a determination of the impact on his site.

MCKAY I received something in the mail from the applicant on this case and it hasn't affected my decision one-way or the other. The storm sewer, when you say the south half of that 1<sup>st</sup> Street has not been vacated?

LONGNECKER That is the only portion of 1<sup>st</sup> Street that has not been vacated.

MCKAY This applicant owns both sides of it?

LONGNECKER Yes he does.

MCKAY Doesn't it have to be vacated before he can plat it?

LONGNECKER It can be vacated during the platting process.

MCKAY You can vacate with a plat?

LONGNECKER Yes.

SCHLEGEL All the Planning Commissioner were sent a copy of this material the applicant has so let's let the record show that maybe not everyone received theirs yet but they did have one sent a copy of this material.

STEVE WALSH South Santa Fe Lake Rd. We own the property to the south and to the north of this project. I don't know that I can add much to what Mr. Longnecker has put in his staff report. The District Advisory Board had a couple of questions, that maybe I can address. Question one had to do with access to McComas and 1<sup>st</sup> Street, and access to the cul-de-sac north of the site. We have no plans to open up that cul-de-sac, as our plans call for a building to go across the front of that cul-de-sac, and an opening there would open my property up to drive-thru traffic from the north, which we don't want. The second question was would screening be provided to cover all residential areas? Our answer to that is yes, as required by the Landscape Ordinance. They asked about access in case of an emergency, and I believe Mr. Longnecker addressed that by speaking with the Traffic Engineering and Fire Department.

MCKAY The original application was for "MF-29" and you have agreed to "MF-18"?

WALSH Yes, we would be willing to go to "MF-18", if the D.A.B. would take away the Protective Overlay that would only allow me to put more than nine units on the "MF-18" zoned property.

MCKAY How many units are you going to put on this?

WALSH I am going to put 18 units on here. It should be in your plan, in the package that we sent you that shows the proposed layouts. Shows Commissioner McKay a site plan.

MCKAY The only problem I am having is 18 units on one acre, plus a clubhouse, enclosed area, and a green area?

WARNER Aren't there some rules and regulations on that during the platting process?

WALSH There was a number of things that we could have done. We could have went and had an architectural consultant give me all kinds of ideas and then I would have spent a lot of money on something where I not have been able to obtain the zoning change.

MITCHELL I am concerned with the size of that sewer, that you may have a conflict with the easement they need.

WALSH They have already put the sanitary sewer in.

MITCHELL The storm sewer is what I am talking about.

WALSH Shows picture on the screen showing where the sanitary and storm sewer will go.

BAREN FRAZIER AND ALFREDIA FRAZIER, 215 N. McComas, Wichita, KS 67203 I am here to speak for my mother that is in attendance here today as well. My mother would like me to express the following: they moved into that area in 1960-1961 when the house was first built, and they moved in that area because it was a very quiet area and it was in a cul-de-sac. When the first apartments were built the noise began to get worse. The access from 2<sup>nd</sup> Street was a concern and Mr. Longnecker answered that for me today. The other point is the possible effect on their value of their property if these apartments are put into place. My mother did talk to other neighbors who had similar concerns, but they have jobs and had to go to work, and could not make this meeting today. My mother would prefer the apartments not be built. If there are going to be nine units and 18 apartments, is that what I am understand?

DUNLAP That is a question that has not yet been answered. The zoning would allow him to put in 18 apartments if it is "MF-18".

HENTZEN Would you point out where your mothers' house is.

FRAIZER Shows on map, the last house on the southwest side on the cul-de-sac.

WALSH Back when these apartments were originally built, in the 1970's, they were built per the old FHA 235 low-income standards. We bought them about four years ago and have invested in them for improvements. Since then I believe there has been a decrease in the noise and trouble at these apartments. Our intention is to build three buildings, one will house nine units, one six units, and one three units. As far as a buffer area, we will do what it will take to maintain our respect from the neighbors.

LONGNECKER One thing that was left off the staff report but is in on the DAB memo, they also want a maximum height of 35 feet on these building. The applicant still wants to go with what is allowed in "MF-18" or "MF-29" which is 45 feet.

**MOTION:** To approve "MF-18" with the height of the buildings being allowed at the 45 feet.

**WARNER** moved, **MCKAY** seconded the motion, and it carried (11-0).

7. **Case No.: ZON2004-62** – Johns, LLC (John Osborne) / Baughman Co., P.A., (Terry Smythe) Request Zone change from "SF-5" Single-family Residential to "LI" Limited Industrial on property described as;

Beginning at the Southwest corner of the Southeast Quarter of Section 29, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas; thence East on the South line of said Southeast Quarter, 875.5 feet; thence North parallel to the West line of said Southeast Quarter, 593 feet, more or less, to the South line of the AT & SF Railroad Right of Way, thence Westerly on said South line 897.5 feet, more or less, to the West line of said Southeast Quarter, thence South 402.5 feet to the point of beginning. Generally located at the northeast corner of Harry and Seville.

**BACKGROUND:** The application area is nine unplatted acres located at the northeast corner of Harry and Seville. As early as 1960, the site has been used for industrial or construction uses, such as a concrete plant. A significant portion of the site is paved, and there are a number of storage or warehouse type buildings along with vertical walls that appear to be used to segregate different materials out in the open. The site is currently zoned SF-5 Single-family Residential, which makes the current uses non-conforming or illegal. The applicant's application states only they are seeking LI, Limited Industrial zoning so the site can be used for uses permitted in the LI district.

Access to the site is provided by a drive off of Seville that is located at the northwest corner of the site, and another drive is located off of Harry that is located at the southeast corner of the tract. Both Seville and Harry are sand and gravel roadways. Seville provides a connection to the Kellogg commercial located to the north, and Harry provides a connection to the industrial area located to the east.

An abandoned railroad right-of-way, that has been or is being converted to a recreational trail, is located immediately north of the application area. North of the abandoned railroad right-of-way there are a variety of GC, General Commercial uses such as car sales, agricultural supplies and other retail uses. East of the site are single-family residential homes located on SF-5 Single-family Residential zoning. Approximately 750 feet further to the east are industrially zoned properties fronting Tyler. The Airport Authority and the Park Board own property located to the south and west of the site; some of which is used for the Pawnee Prairie Park golf course.

**CASE HISTORY:** None

**ADJACENT ZONING AND LAND USE:**

NORTH: GC, General Commercial; recreational trail, car and agricultural sales  
SOUTH: SF-5, Single-family Residential; golf course  
EAST: SF-5, Single-family Residential and LI, Limited Industrial; single-family residences, warehousing  
WEST: SF-5, Single-family Residential; undeveloped

**PUBLIC SERVICES:** Harry and Seville are unimproved two-lane roads, for which improvements will need to be addressed at the time of platting. Sewer and water are available to the site.

**CONFORMANCE TO PLANS/POLICIES:** The *Wichita Land Use Guide* map depicts this site as appropriate for "industrial, transportation, utility or communication" uses. According to the plan, the primary location determinants are the characteristics of the individual use, nature of any emissions, the surrounding uses and zoning districts, and the degree of compatibility with adjacent uses. "New industrial development is anticipated along segment...from Tyler Road on the west to Kellogg...."

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The application area is located in a transition area with respect to uses and zoning. There are a few single-family homes located on single-family zoning immediately east of the site, and single-family zoning developed as a golf course, and parkland, located to the south and west. Properties to the north and further east are zoned and developed for commercial and industrial uses.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned SF-5 Single-family Residential but developed as a non-conforming industrial use. Given the way the site is currently developed; its proximity to commercial and industrially zoned land and uses, and major transportation facilities such as Kellogg and Mid-Continent Airport, the current zoning is not appropriate.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Granting LI zoning would expand the types of uses permitted on the site. However, code required screening and landscaping would minimize detrimental affects.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The *Wichita Land Use Guide* map depicts this site as appropriate for "industrial, transportation, utility or communication" uses. According to the plan, the primary location determinants are the characteristics of the individual use, nature of any emissions, the surrounding uses and zoning districts, and the degree of compatibility with adjacent uses. "New industrial development is anticipated along segment...from Tyler Road on the west to Kellogg....
5. Impact of the proposed development on community facilities: Seville and Harry are both unimproved roads. Traffic generation could increase from the site if the request is approved, however improvements guaranteed at the time of platting can address any needed facilities.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**WARNER** moved, **MCKAY** seconded the motion, and it carried (11-0).

8. **Case No.: ZON2004-60** – Coleman Ventures LLC c/o Don Coleman (owner/applicant); John Green (contract purchaser) Request Zone change from "B" Multi-family Residential to "NO" Neighborhood Office

Lots 661 and 662, Overlook Addition to Wichita, Sedgwick County, Kansas. Generally located North of Central and west of Pershing.

**BACKGROUND:** The applicant requests a zone change from "B" Multi-Family to "NO" Neighborhood Office on a 0.17 acre platted tract located north of Central, between Terrace and Pershing. The site is currently developed with a vacant office building that formerly housed medical services. The site's current "B" Multi-Family zoning permits offices for medical services but does not permit offices for other professions. The applicant has requested to rezone the property to "NO" Neighborhood Office to permit offices for other professionals, more particularly an insurance office for the contract purchaser.

The surrounding area is characterized primarily by commercial uses along Central with residential uses to the north and further west along Central. The properties north of the site are zoned "TF-3" Two-Family Residential and are developed with single-family residences. The property west of the site was rezoned to "NO" Neighborhood Office in 2001 and is developed with an office building. The property east of the site is zoned "GO" General Office and is developed with a real estate office. The property south of the site across Central is zoned "LC" Limited Commercial and is developed with a vacant service station.

**CASE HISTORY:** The site is platted as part of the Overlook Addition, which was recorded April 2, 1914.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"TF-3"	Single-family
SOUTH:	"LC"	Vacant service station
EAST:	"GO"	Office
WEST:	"NO"	Office

**PUBLIC SERVICES:** The site has access to Central via a shared drive with the office to the west. Central is a four-lane arterial street with traffic volumes of approximately 20,000 vehicles per day. The 2030 Transportation Plan estimates that the traffic volume on Central will increase to approximately 28,000 vehicles per day. Planning staff recommends that the current shared access drive to the site be formalized through a dedication of access control and cross lot access to limit the impact of traffic and turning movements from the site on the capacity of the arterial street. Public water and sewer currently serve the site.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Office" development. The Office Locational Guidelines in the Comprehensive Plan indicate that low-density office uses can serve as a transitional land use between residential uses and higher intensity uses. The proposed office use would serve as such a transitional use between the residential uses located north and west of the subject property and the commercial uses located along Central.

**RECOMMENDATION:** Based upon several factors, planning staff finds the subject property appropriate for neighborhood office uses. First, the subject property is currently zoned "B" Multi-Family (which permits medical offices) and has been used as an office for over 40 years without noticeable detrimental impacts upon surrounding properties. Second, the "NO" Neighborhood Office district does not permit multi-family uses by-right (the "B" district permits multi-family uses up to 75 units per acre), and the proposed neighborhood office use likely will have less impact on the surrounding properties than redeveloping the site with multi-family uses. Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to the dedication of access control along Central except for the west 15 feet of Lot 662, Overlook Addition and the dedication of cross lot access to Lots 663 and 664, Overlook Addition.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized primarily by commercial uses along Central with residential uses to the north and further west along Central. The zoning of the properties along Central is commercial or office except further to the west. The proposed use of the site for offices for professions other than just medical services is consistent with the zoning, uses, and character of the neighborhood.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "B" Multi-Family, which permits offices for medical services. The site could be used for offices for strictly medical services; however, the proposed office use for other professions should have the same impact as an office for medical services only.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The "NO" Neighborhood Office district will reduce the potential detrimental affects that could result from the property being redeveloped with high-density residential uses under the current "B" Multi-Family zoning.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Office" development. The Office Locational Guidelines in the Comprehensive Plan indicate that low-density office uses can serve as a transitional land use between residential uses and higher intensity uses. The proposed office uses would serve as such a transitional use between the residential uses located north and west of the subject property and the commercial uses located along Central.
5. Impact of the proposed development on community facilities: Community facilities should not be adversely impacted.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**WARNER** moved, **MCKAY** seconded the motion, and it carried (11-0).

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9. **Case No.: CON2004-40** – Westar Energy c/o Cindy Risch (owner/applicant) Request Sedgwick County Conditional Use for an electrical substation on property zoned "SF-20" Single-family Residential on property described as;

Beginning 30 feet East of the Northwest corner of the Southwest Quarter of Section 28, Township 28 South, Range 1 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas; thence East a distance of 417.43 feet on the Quarter Section line; thence South a distance of 208.71 feet parallel to the West Section line; thence West a distance of 417.43 feet parallel to the Quarter Section line; thence North a distance of 208.71 feet to the beginning. Generally located at the southeast corner of 59<sup>th</sup> Street South and Broadway.

On December 9, 2004, the Planning Commission for the City of Haysville considered the above-captioned request and recommend approval of the request subject to the conditions contained in the Staff Report plus the following two additional conditions:

1. All lighting shall be directed away from adjacent residential areas.
2. The landscape plan shall be submitted no later than May 31, 2005, and all plant materials required by the landscape plan shall be planted no later than May 31, 2006.

**BACKGROUND:** Westar Energy is requesting a Conditional Use for a major utility to permit an electrical substation to be located on the southeast corner of 59<sup>th</sup> Street South and Broadway on a two-acre unplatted tract that is zoned "SF-20" Single Family. The subject property is located within the Zoning Area of Influence of the City of Haysville. A major utility may be permitted with the approval of a Conditional Use in the "SF-20" Single Family-zoning district.

The attached site plans and sample photographs show electrical substation equipment contained within a compound enclosed with a combination of a concrete wall and a chain link fence. The site plan also shows an existing hedgerow along the north property line to provide screening from adjoining properties to the north. The Planning Director may approve a landscape plan to permit the existing hedgerow, supplemented by additional plantings where necessary, to be in conformance with the screening requirements of the Unified Zoning Code.

The applicant indicates that the area near the Wichita-Haysville boundary has a growing demand for electricity, and that the proposed electrical substation is needed to meet projected needs. The applicant indicates that the site was chosen based upon the following criteria: 1) the site is owned by Westar Energy and has been a proposed future electrical substation site since 1982; 2) the site is located immediately under existing transmission lines; and 3) the site located near existing distribution lines (see attached document).

**CASE HISTORY:** The subject property is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-5" Single family residences  
SOUTH: "SF-20" Agriculture  
EAST: "SF-20" Agriculture  
WEST: "SF-20" Agriculture

**PUBLIC SERVICES:** The subject property has access to Broadway, a four-lane arterial street. No personnel are assigned to the site, with personnel visits occurring about once a month. Therefore, the facility will have minimal impact on municipal services. The approval of this request will enhance the delivery of electric service to the Haysville area.

**CONFORMANCE TO PLANS/POLICIES:** Both Sedgwick County's and Haysville's plans are silent regarding the siting of utilities such as the proposed electrical substation. The subject property is identified in the Wichita Land Use Guide as appropriate for utility use. Prudent planning principles indicate that the electrical substations should be located so they facilitate the orderly growth of the county and the communities they serve.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting the property within one year and subject to the following conditions:

1. The site shall be developed and operated in general conformance with the approved site plan. All improvements shall be completed prior to commencement of operations.
2. The existing hedgerow shall be maintained along the north property line and shall be supplemented by evergreen vegetation to provide a year-round visual screen, as determined by the Planning Director through approval of a landscape plan prior to the issuance of a building permit.
3. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
4. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Most of the surrounding property is in agricultural use and is zoned "SF-20" Single Family. The application area is generally rural in character. The proposed electrical substation is compatible with the zoning, uses, and character of the area.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-20" Single Family and could be used as presently zoned. However, the site is located immediately under transmission lines and, therefore, is the most logical location for an electrical substation.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request will not detrimentally impact nearby property as electrical facilities of this type are located throughout the county, and adequate screening will be provided. The request is in advance of development of most surrounding properties, thus providing ample time for nearby property owners to plan accordingly.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Electrical service is used by everyone, and there is a need to adequately provide the service in the most efficient manner possible.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: Both Sedgwick County's and Haysville's plans are silent regarding the siting of utilities such as the proposed electrical substation. The subject property is identified in the Wichita Land Use Guide as appropriate for utility use. Prudent planning principles indicate that the electrical substations should be located so they facilitate the orderly growth of the county and the communities they serve.
6. Impact of the proposed development on community facilities: Approval of the request will improve the delivery of electrical service throughout the county.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**WARNER** moved, **MCKAY** seconded the motion, and it carried (11-0).

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10. **Case No.: DR2004-12** – Request Adoption of amendments to the April 19, 2001 Edition of the Wichita-Sedgwick County Unified Zoning Code. The amendments to the Unified Zoning Code propose to amend Section III-C.2.a. and b. dealing with the purpose section of the Community Unit Plan Overlay District, and Nonresidential Community Unit Plans to clarify the term "unified control" and to clarify the minimum square footage of gross floor area or acreage required in order to require a Community Unit Overlay District.

**MAPC DEFERRED this item on November 18, 2004**

DUNLAP We have had this item before us previously, and if you will remember we deferred the item and asked the Realtors' Association to get involved and talk to their people. The Builders' Association has done the same thing. Primarily because we are talking about a major change to clarify what happens under the Community Unit Plan, and what triggers it and how it should be done.

DALE MILLER Planning staff presented the staff report. [insert blue memo dated November 19, 2004.] I believe this is the third visit with this item, but this would be the first time that you have seen all of the proposals in one place. We did have a meeting with the Wichita Area Association of Realtors, and my consensus from their comments was there were clearly people who were opposed to this proposal. The important thing that I pointed out to them was the three things that they had concerns about that were mentioned have nothing to do with CUP's. They dealt with notice requirements, protest requirements, and did not have anything to do with the CUP amendments. Other than that they had a negative experience involving a CUP. Staff does not have anything invested in this beyond that we were directed to do this.

MARNELL Do we have an idea of cost increase to developers associated with this? Say someone was going to do a five-acre neighborhood retail, under the current plan what is the cost?

MILLER I did not bring that with me today. The CUP does add to the cost of doing a rezoning.

MARNELL Maybe the Engineering people that are here today could answer that.

MILLER The price varies with the size of the property.

MARNELL I don't mean the permit price, I am talking about the cost of a CUP.

MILLER The zoning fee is based on acreage, but I would say about \$880 per application fee. There is a 1/2 price break on the filing fee that if you are required to file a CUP with a zone change you get a 1/2 price break on the zoning.

MARNELL My concern was with the backside, the engineering type of cost.

MILLER They would be able to answer that.

TRICIA CURZYDLO, Governmental Affairs Director for the Wichita Area Association of Realtors (WAR), 540 S. Broadway, Wichita, KS 67206 As many of you are aware W.A.R. is an association comprised of nearly 2,000 realtors, commercial and residential.

W.A.R. does support the proposed amendments to Section III-C.2.a. which provides a definition of unified control, in that the current Code that is lacking. We feel that by including this definition it gives our members a better understanding when they need to be complying with this, and what falls beneath the requirements for the CUP.

However W.A.R. cannot support the amendments that are proposed to Section III.b. dealing with non-residential CUP's. The amendment will increase the number of projects that require the development of a CUP. Under current Statute when you look at the six-acre requirement, and what zoning requirement it falls under, you are dealing with a specific amount of property. However when you move to the 30,000 square feet requirement, when they do their numbers, you could have an acreage as small as under three acres. That when it falls in the right zoning district is going to have to come in front of you with a CUP, and that will increase the cost of those developments, and could possibly hinder us to good growth in our community. The proposal will also decrease the amount of flexibility that developers and our project people are going to have when they are determining the use of their property.

If you did want to go ahead with the proposal in front of you today one significant change that I would recommend is the way that it is worded. As it is proposed, is that it deals with a contiguous area of six acres or more under unified control and then it breaks down specifically what types of zoning applies to the square footage. There is no requirement of what type of zoning applies to those six acres, so some words would need to be added to clarify what type of zoning falls within those six acres; so that the Code would be uniform for everyone, instead of that being a call that would be made by this Commission or the Planning Staff.

What WAR would recommend is a creation of a task force or working group where members of the development community, the W.A.B.A. and W.A.A.R. could work with the City Planning staff and members of this community to create some type of solution to the problems that the Commission has when it comes to the applications that they are receiving for CUP's.

WES GAYLON, I am appearing today on behalf of our developers council and a newly formed commercial council that we just put in place a few months ago. We have been having dialogue with our counterparts with W.A.R. about the proposed amendments to the CUP's. We agree that having the language, the uniformed control language as is proposed is a good thing, and there has been some difference of opinion in the past as to what that meant and to whom. We agree with the establishment of the working group.

Some of the issues that have been raised are some of the restriction imposed by virtue of the CUP. What the original intent was in terms of using it as a tool, when it could be used, versus when it is required to be used and how the restrictions are applied, and when those restrictions can be changed and the process you have to go through seems to be more cumbersome as we go through at the time as to what it was originally.

Use of the Protective Overlay in conjunction with the C.U.P. is an issue that some people would like to look at and discuss, and the degree of change that could be done administratively by John Schlegel and staff here is another issue.

WARNER My first question is do you think it is necessary to make the change in the first place?

GAYLON The group doesn't feel that way. Until this issue was raised there was discussion about some of the requirements imposed and difficulties encountered in amending some of the requirements at later times. There was discussion had about how a different department might view what the intent of the CUP was, Planning Department versus OCI, as an example. There have been concerns about notification becoming an issue, depending or not if there was a split, but a Parcel that is being put into a CUP in conjunction with it, it may not affect a neighborhood and may be similar to what is existing, but the notification and what you have to go through.

MITCHELL I was one of the Commissioners that raised this issue, and it appeared to me that we were getting into a habit of laying out tracts to be just under six acres. It was my recollection when CUP's started out that it was suppose to be a tool to aide development.

MCKAY I am like Commissioner Mitchell, we got so hung up on zoning a piece of property, and there was always a Protective Overlay, that can be adjusted by an Administrative Adjustment and the public would not have to go before a Governing Body.

MARNELL I would like to know, in ballpark terms, if you have a five-acre development that you have some generic thing in mind, what is the difference under the current regulation or if it got pulled under a CUP. Does it go up or does it go down?

TERRY SMYTHE Baughman Company, normally a CUP is about \$5,000 to put together a six acre CUP, realizing we have to take a CUP through the zoning process, deferrals; once I rezone it, and CUP it, and if there is a change in the plat I have to go back and re-modify the CUP so the CUP matches the plat. So there is a lot of contingency out there about what I have to do later.

MARNELL So you are talking about \$1,000 an acre more than if you didn't have to put a CUP on top of what you were doing because you would have to do some engineering work.

SMYTHE Correct, we would still have to do the engineering work to get the property platted but there are administrative drawings that you do for the preliminary.

GAROFALO What was the procedure used when you prepared this, did you mail this to some of the developers and the real estate people?

MILLER After the last meeting we sent it out to interested parties.

**MOTION:** To request the Planning Director to form a formal working group consisting of

- ❖ **Appropriate city staff**
- ❖ **Three commercial real estate broker members of the Wichita Association of Realtors**
- ❖ **Three members from the Developments Committee of the Wichita Area Builders Association**
- ❖ **One residential real estate broker of the Wichita Area Association of Realtors, and**
- ❖ **One residential real estate broker of the Sales and Marketing Council of the Wichita Area Building Association**
- ❖ **One member of MAPC**
- ❖ **One member of the Professional Group of Engineering**

**MCKAY** moved, **MITCHELL** seconded the motion, and it carried (10-0).

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The Metropolitan Area Planning Department informally adjourned at 3:46 p.m.

State of Kansas     )  
Sedgwick County    ) ss

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
John L. Schlegel, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)